

Attachment A

List of significant species in the Sutter Basin identified in the CALFED Bay-Delta Program:

Spring Chinook Salmon
Winter-run Chinook Salmon
Splittail
Striped Bass
Anadromous Lampreys
Western Pond Turtle
Swainson's Hawks
Bank Swallow
Western Yellow-Billed Cuckoo
Valley Elderberry Longhorn Beetle

Fall-run and Late Fall-run Chinook Salmon
Steelhead Trout
Green & White Sturgeon
Giant Garter Snake
Western Spadefoot
Double-crested Cormorant
Greater Sandhill Crane
California Red-Legged Frog
Western Least Bittern

Attachment B

ACTIVE LOCAL SUPPORT

The following list of entities and organizations have pledged their support and are actively participating in the CEAL program:

Sutter County Community Services Department
Sutter County Board of Supervisors
Sutter Bypass & Butte Slough Water Users Association
Butte Slough Irrigation Company
Reclamation District 1660
Northern California Water Association
The Lower Butte Creek Project Partners
California State University - Chico (Butte Creek Watershed Plan)
Butte Creek Watershed Conservancy
Butte Sink Waterfowl Association
Central Valley Habitat Joint Venture Partners
California Rice Promotion Board
Central Valley Project Improvement Act - Anadromous Fish Restoration Group
U.S. Fish & Wildlife Service - Sutter National Wildlife Refuge
Bureau of Reclamation - CVP Conservation Program
California Dept. of Fish & Game - Inland Fisheries
California Dept. of Water Resource
Wildlife Conservation Board

(See attached letters of support and additional letters of support will be forthcoming.)

County of Sutter
Office of the County Administrator

...established 1850

January 8, 1999

Olen Zirkle
Ducks Unlimited
3074 Gold Canal Drive
Rancho Cordova, CA 95670

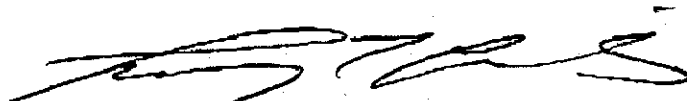
Dear Mr. Zirkle:

This letter is to confirm that, based on preliminary discussions you have had with both Supervisors Dick Akin and me, Sutter County may be interested in supporting implementation of an Agricultural Easement Program sponsored by your organization. Sutter County, as part of its General Plan, encourages retention and protection of agricultural land, both as part of our cultural heritage and as a significant and vital component of our economy. Therefore, a program such as you have described, which allows farmers to continue to raise, and rotate appropriately, crops while preserving the land from development may be of interest to the Board of Supervisors for implementation on lands not designated for urban development.

As you are aware, the Board of Supervisors has not considered this matter and would have to do so before a formal endorsement from Sutter County could be provided. I will be happy to schedule a presentation of your proposal to the Board after you have more specifics.

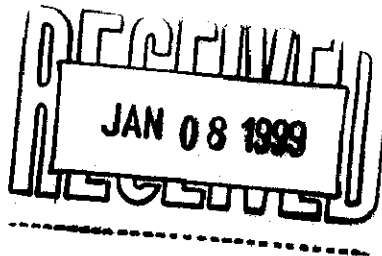
If you have any questions, please give me a call.

Sincerely,



LARRY T. COMBS
County Administrative Officer

LTC:smm



Mr. Olen Zirkle
Ducks Unlimited
3074 Gold Canal Dr.
Rancho Cordova, California 95670

January 7, 1999

Dear Mr. Zirkle,

This letter is to confirm my interest in an agricultural easement program in the Sutter Basin area and on lands north of the Sutter By-pass. I am interested for several reasons.

1. As a farmer I have about 900 acres that would be suitable for such a program.
2. As the Supervisor of Sutter County's fifth district I see this as a way to prevent development from consuming the remaining nesting and winter feeding areas in the Sacramento Valley.
3. As a person who loves the outdoors and hunting, I would like to see habitat preserved for waterfowl so that my son and grandson can enjoy the waterfowl and hunting as I have. We all know that agriculture provides habitat for wildlife.

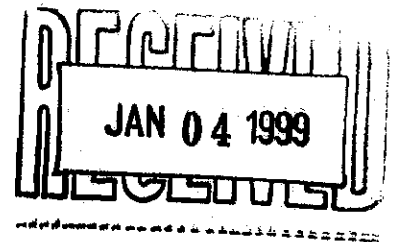
Sincerely,

Dick Akin

W. Ashley Payne

PO Box 1813
Woodland, CA 95776-1813

December 30, 1998

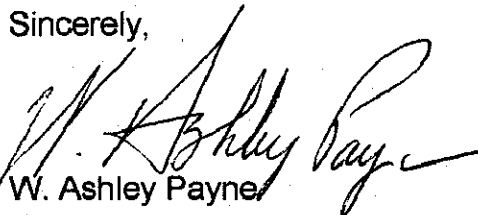


Olen Zirkle
Ducks Unlimited Inc.
Western Regional Office
3074 Gold Canal Drive
Rancho Cordova, CA 95670-6616

Dear Mr. Zirkle:

I am writing this letter to inform you of our interest to participate in Ducks Unlimited agriculture easement program. We own 1600 acres of farmland in the Sutter Basin which we farm to wheat, tomatoes, rice and safflower. We would consider selling our development rights on all or part of these acres if the terms are agreeable to both parties. If you require any further information please do not hesitate to contact me.

Sincerely,


W. Ashley Payne

AMARAL



RANCH

Monday
January 4, 1998

To:
Olen Zirkle
Ducks Unlimited
3074 Gold Canal Drive
Sacramento California
95670

RE: 705 acre Giusti Ranch
Sutter County, California

Dear Olen :

I own a 705 acre ranch in the Sutter Basin adjacent to the Sutter National Wildlife Refuge.

Attached is a map showing the properties location.

I am an avid Duck Hunter and an avid Conservationist.

I am interested in placing a Conservation Easement on this property. I would like the easement to protect the agricultural productivity of this property for wildlife and waterfowl in perpetuity.

I am willing to work with Ducks Unlimited and any other Conservation Groups that can help bring this easement to reality.

I am interested in any ideas and thoughts on this matter.

Please feel free to contact me with any questions you may have.

Sincerely.....

Greg Amaral
Tel: (707)-864-8000
Fax: (707)-864-8001

MONTNA FARMS

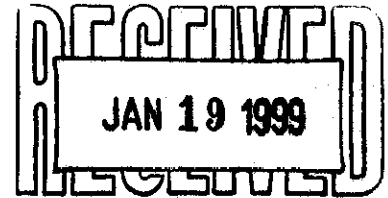
12755 GARDEN HIGHWAY

YUBA CITY, CA 95991

OFc (530) 674-2837; FAX (30) 671-4740

January 13, 1999

Olen Zirkle, Jr.
Ducks Unlimited, Inc.
3074 Gold Canal Drive
Rancho Cordova, CA 95670-6116



Re: Agricultural Easements

Dear Olen:

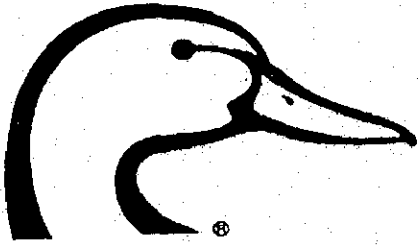
Montna Farms is located on the east side of the Sutter Bypass in the Sutter Basin. We farm a total of 2300 (+/-) acres with our predominate crop being rice. Our operation has been very progressive in adopting wildlife and waterfowl programs. We started in 1984 with a winter flooding program for our rice acreage that now serves as a prime example of the benefits of agricultural land can provide wildlife and waterfowl in our area.

In the past few years, we have been actively reviewing various agricultural land protection programs for long term protection of the agricultural productivity of our lands and to assist us in our financial and estate planning. We are quite interested in working with Ducks Unlimited on their proposed Agricultural Easement Program and would consider entering into an easement agreement if the terms and conditions are acceptable.

We would be very interested in looking at your documents once they are available.

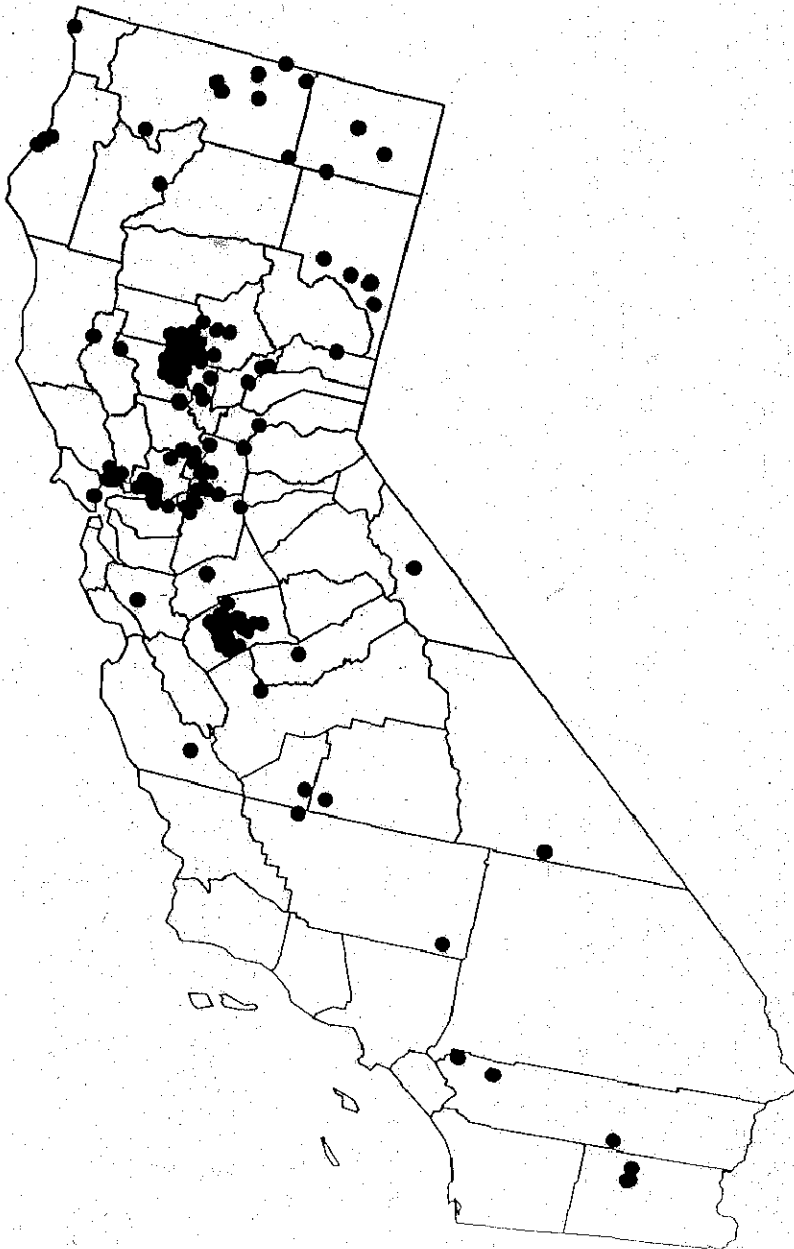
Sincerely,

Alfred G. Montna



DUCKS UNLIMITED IN CALIFORNIA

Ducks Unlimited is committed to wetland habitat development in California. Through 04/20/98, DU participated in 412 active and completed projects throughout the state. The total costs of these projects amounted to \$20,059,060, including \$4,682,289 MARSH funds. These projects resulted in the development and/or enhancement of 181,455 acres of wildlife habitat, including 160,603 acres of wetlands.



Conservation Initiatives in California

Agricultural Enhancement

- **Sacramento Valley:** For Sacramento rice growers, this was the sixth year of the Rice Straw Reduction Act of 1991 (AB 1378). Ducks Unlimited's Valley CARE program has promoted an alternative method of straw decomposition through shallow flooding of harvested rice fields. This practice also provides supplemental habitat for migrating and wintering waterbirds. During 1997/98 DU staff provided technical assistance to growers on 206,150 acres of rice ground. A total of 110,620 acres of rice was flooded during winter of 1997.
- **The Delta:** Agricultural enhancement for waterbirds in the Delta consists primarily of winter flooding of post-harvest grain fields. Flooding in the Delta is used primarily to control weeds, reduce soil salinity, prevent soil subsidence, and reduce wind erosion of the peat soils. During winter 1997, DU staff provided technical assistance on the optimal timing, duration, and depth of flooding for waterbird habitat, which resulted in the shallow flooding of 15,688 acres of agricultural land among several islands in the Delta.
- **Central Valley Project Improvement Act:** Ducks Unlimited is administering a portion of the Central Valley Project Improvement Act (CVPIA) (b) (22) program through the US Fish and Wildlife Service. This program provides matching funds for winter flooding of post-harvest small grain fields. These winter flooded fields will provide wetland habitat for numerous waterfowl and other wetland associated wildlife. Twenty-six landowners participated during the 1997/98 winter flooding period enrolling 18,274 acres.
- **Tulare Basin:** On the Hansen Ranches 2,944 acres of agricultural lands were flooded under the CVPIA (b) (22) program in the Tulare Basin. A variety of crops are grown on Hansen Ranches, however cotton is the primary agricultural crop. Other crops are rotated on the ranch with a portion of the wheat, safflower, or alfalfa seed fields flooded in late summer to control for a cotton seedling disease called *Thielaviopsis*. The project consisted of flooding 2,400 acres of wheat fields and 594 acres of alfalfa seed.

Grasslands Ecological Area: The Grasslands Ecological Area encompasses 179,463 acres, supporting 22 federal threatened or endangered species. A North American Wetlands Conservation Act project in the grasslands will enhance and restore 30,625 acres. Of those acres, 28,848 acres of palustrine emergent wetlands, 10 acres of palustrine forested wetlands (riparian), and 1,767 acres of wetland-associated uplands will be restored through this multi-partner effort.

San Pablo Bay Initiative: Urban development, salt production, agriculture and sedimentation from mining has resulted in approximately an 83% loss in acreage of tidal marshes and a 6% loss of water surface area of the Bay. DU is working to protect, restore, enhance and manage critical habitat in this area. Mudflats, tidal salt marshes, seasonal wetlands, riparian habitat and salt ponds are used extensively by waterfowl and wetland dependant wildlife, including threatened and endangered species. This initiative will enhance and restore 6,637 acres.

Klamath Basin: The Klamath Basin in northeast California covers an extensive landscape dominated by agriculture. Boasting winter migration numbers of 5 million birds or more, the Refuges of the Basin are considered to contain some of the most important waterfowl habitat in North America. The Klamath Basin is an important breeding area for mallard, gadwall, cinnamon teal, pintail, ruddy ducks and Canada geese. DU is working to restore and enhance critical wildlife habitat in this area.

**STANDARD CLAUSES --
SMALL BUSINESS PREFERENCE AND CONTRACTOR IDENTIFICATION NUMBER**

NOTICE TO ALL BIDDERS:

Section 14835, et. seq. of the California Government Code requires that a five percent preference be given to bidders who qualify as a small business. The rules and regulations of this law, including the definition of a small business for the delivery of service, are contained in Title 2, California Code of Regulations, Section 1896, et. seq. A copy of the regulations is available upon request. Questions regarding the preference approval process should be directed to the Office of Small and Minority Business at (916) 322-5060. To claim the small business preference, you must submit a copy of your certification approval letter with your bid.

Are you claiming preference as a small business?

_____ Yes* X No

*Attach a copy of your certification approval letter.

NONDISCRIMINATION COMPLIANCE STATEMENT

1.19 (REV. 3-95) FMC

COMPANY NAME

Ducks Unlimited, Inc.

The company named above (hereinafter referred to as "prospective contractor") hereby certifies, unless specifically exempted, compliance with Government Code Section 12990 (a-f) and California Code of Regulations, Title 2, Division 4, Chapter 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. Prospective contractor agrees not to unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave.

CERTIFICATION

I, the official named below, hereby swear that I am duly authorized to legally bind the prospective contractor to the above described certification. I am fully aware that this certification, executed on the date and in the county below, is made under penalty of perjury under the laws of the State of California.

OFFICIAL'S NAME

James L. Ware

DATE EXECUTED

PROSPECTIVE CONTRACTOR'S SIGNATURE

Senior Group Manager

PROSPECTIVE CONTRACTOR'S TITLE

Ducks Unlimited, Inc.

PROSPECTIVE CONTRACTOR'S LEGAL BUSINESS NAME

EXECUTED IN THE COUNTY OF

Shelby In

PERSONNEL POLICIES AND PRACTICES

EQUAL EMPLOYMENT OPPORTUNITY

Statement of Policy

At Ducks Unlimited, Inc. it is our policy to recruit and hire employees without regard to or discrimination because of age, race, creed, color, national origin, sex, handicap or veteran status. This policy of nondiscrimination applies to all phases of employee relations – hiring, compensation, performance rating, promotion, transfer and other personnel matters.

Our employment objective is to select individuals who meet the organization's high standards of character, education and occupational qualifications; who can carry out the organization's work competently; who have capacity for growth; and, who will become an active part of our organization.

We know that our strength and future growth depend directly upon the contribution made by each person within our organization. Productivity and efficiency result from real job satisfaction and from the opportunity each person has for his or her individual self-development. Our employment policy is designed to:

- *Place each employee, insofar as practicable, in a position which best suits the individual's natural and acquired aptitudes and skills.*
- *Offer each employee opportunity for self-development and advancement through training and on-the-job experience.*
- *Accord fair and equitable treatment to every employee at all times.*
- *Recognize the importance of the work of each employee to the overall success of the organization.*

SEXUAL HARASSMENT

Statement of Policy

Ducks Unlimited, Inc. maintains a strict policy against sexual harassment. **Simply put, sexual harassment will not be tolerated on the part of any employee.** All employees are responsible for assuring that the workplace is free from sexual harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, where:

- Submission to the advances is made either explicitly or implicitly a term or condition of employment.
- Submission to or rejection of the advances is used as the basis for making employment decisions.
- Such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.

All employees should avoid any action or conduct that might be viewed as sexual harassment. Approval of, participation in, or acquiescence in conduct constituting sexual harassment will be considered a violation of this policy. If any employee believes that he or she has been subject to sexual harassment at work by anyone, including supervisors, co-workers or visitors, he or she should report this immediately to his or her immediate supervisor or Human Resources. Sexual harassment complaints will be handled with as much confidentiality as possible. There will be no retaliation against any employee who reports a claim of sexual harassment or against any employee who is a witness to the harassment. An immediate investigation will be conducted in an attempt to determine all the facts concerning the alleged harassment. In making this investigation, every effort will be made to be fair to all parties involved. If it is determined that sexual harassment has occurred, corrective action will be taken, up to and including reprimand, discharge, or other appropriate action.

If it is determined that no sexual harassment has occurred, or there is not sufficient evidence to conclude that harassment has occurred, this determination will be communicated to the employee who filed the complaint.

DRUG FREE WORKPLACE PROGRAM

Statement of Policy

Because substance abuse poses a serious threat to our employees, their families and to the entire organization, Ducks Unlimited has established this policy in an effort to promote and maintain a drug-free work environment.

The ultimate goal of this policy, however, is to balance respect for individual privacy with the organization's need to maintain a safe, productive, drug-free work environment for all employees; maintain safety and security at DU's community-based events, as well as at the facilities and properties in the communities where we are located; and, provide a quality of service to the organization's members, as well as non-members and visitors, in a fashion consistent with the high standards set by the Board of Directors of Ducks Unlimited, Inc.

Standard of Conduct

As a Standard of Conduct for employees of Ducks Unlimited, employees will not be permitted to possess, consume, or distribute drugs, controlled substances or abuse alcohol in the workplace or report to work or perform their duties under the influence of alcohol or with drugs present in their system. To allow otherwise jeopardizes the safety of our fellow employees, our members, our facilities, and the communities which we rely upon for support. Any employee determined to be in violation of this policy or standard will be subject to disciplinary action, which may include termination, even for the first offense.

Drug and Alcohol Abuse Screening/Testing

Ducks Unlimited recognizes that carefully selected tests and testing procedures have a proper role in any comprehensive substance abuse program, as do properly conducted searches of the effects, vehicles and persons of employees, contractors or visitors.

• Job Applicants

As a condition of regular employment all applicants must complete a drug screen test. If test results are confirmed positive, the employment offer will be withdrawn.

• Current Employees

The Company utilizes screening practices to identify employees who use illegal drugs or abuse alcohol. It is a condition of continued employment for all employees to submit to a drug screen test when:

- a. there is sufficient cause to believe an employee is under the influence of alcohol or has drugs present in their system; or,
- b. there is any mishap or accident involving an employee during business hours or while on Company business in which injury to individuals or damage to property occurs as a result of the impaired employee's involvement.

Failure to submit to required medical or physical examinations/tests is considered misconduct, and as such, grounds for disciplinary action, including termination.

General Procedures

Any employee reporting for work visibly impaired is unable to properly perform required duties and will not be allowed to work. If, in the opinion of the employee's supervisor the employee is considered impaired, the employee will be transported by taxi or an alternative safe transportation mode to his/her home or a medical facility. **An impaired employee will not be allowed to operate or drive any vehicle during business hours or while on official Company business, or any vehicle rented, leased, owned or otherwise intended for Company use or business.**

Date of Inspection: _____

DU Region _____
State _____

Conservation Easement For Agricultural Lands
Preliminary Property Inspection Form (PPI)

I. Project History

Grantor's Name _____

Address _____

Telephone _____

Property Name & Location (map attached) _____

DU Focus Area: _____

DU Project Name _____

Latitude and Longitude Coordinates of the approximate center of the site:

Crop Types

Total Acres _____ Cropland Acres _____ Rice Acres _____

Permanent Crops _____ Water Rights _____ Wetlands _____

Buildings and Grounds _____

II. Condition of Land

A. Description

Give a general description of the property, especially describing the condition and management of the farm including crop rotation and water source and delivery system. Also note any erosion, gravel pits, or pollution, such as chemical spills, fuel storage tanks or air strips.

B. Habitat Potential

Describe the potential of the farm for increased habitat, including land and water available for winter flooding, water delivery systems, waste water areas and other areas including natural wetland habitat

C. Buildings and Structures

Describe size, type and condition of structures including houses, sheds, silos, barns, utilities, powerlines, etc.

D. Biological Opinion

1. Describe the biological significance of the property and explain how a conservation easement will enhance the focus area and contribute to the DU mission.

2. Explain the use and potential for protection, if any, conservation or otherwise, of the neighboring properties contiguous to this subject property.

E. Financial Analysis

1. Enumerate the costs associated with this transaction. What funds will be utilized to finance this transaction?

F. Recommendation

G. Post Purchase Intent

III. Check List:

- | | Yes | No | |
|----|--------------------------|--------------------------|--|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | Title search has been done. |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | Grantor owns clear title to land. |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | Owner wishes to sell easement in current tax year. |

Conservation Easement for Agricultural Lands Baseline Study Outline

The following matters should be considered in writing every baseline study:

A. Background information

1. Method of study
2. History of property use; include current use (historic and current crops)
3. Conservation values to be included in the easement including a list of the easement restrictions and reserved rights

B. Legal information

1. legal description
2. Acreage (Must agree with all other documentation)
3. Latitude and Longitude
4. GPS location of major structures and property control points

C. Property description

1. Geology
2. Soil types
3. Hydrology: ponds, streams, lakes, wetlands, etc.
5. Ecological Description (can include reference to retained rights and list of restrictions)
 - a. Vegetation - description of each type (On-site)
 - i. Element occurrences
 - ii. Plant communities
 - iii. Noxious weeds
 - iv. Plant species list sorted by plant community including annual grasses, perennial grasses and woody species (Table format if possible)
 - b. Wildlife - description
 - i. Habitat use
 - ii. Migratory species
 - iii. Species of special concern
6. Man-made Features - narrative description of improvements, structures, trails, roads, fences, wells, power lines, pipelines; include historic use, etc.
7. Land use (Include current crop rotation plan)
8. Aesthetics
9. Date of report

D. Summary and Conclusions

**OPTION AGREEMENT FOR
PURCHASE AND SALE OF CONSERVATION EASEMENT
DRAFT**

This Option Agreement (the "Agreement") is entered into this _____ day of _____, 1999, by and between _____, whose address is _____ ("Grantor"), and Wetlands America Trust, Inc. ("Grantee"), a District of Columbia not-for-profit corporation with its principal offices at One Waterfowl Way, Memphis, Tennessee.

For the consideration listed below and the mutual covenants and agreements contained in this Agreement, Grantor hereby grants to Grantee and its successor and assigns, the exclusive right and option (the "Option") to purchase a conservation easement in the form and upon the terms and conditions of the conservation easement attached hereto as Exhibit A (the "Conservation Easement") on, over and across certain land located in _____ County, State of California, containing _____ acres, more or less, shown on the map attached as Exhibit B and as described in Exhibit B-1 (the "Property").

TERMS AND CONDITIONS

1. Option Term. Grantor agrees that this Option will remain in effect until and through 11:59 p.m., _____. This Option shall be exercised upon posting by written notice to Grantor, at _____, by certified mail.
2. Option Consideration. As consideration for the Option, Grantee shall pay Grantor the sum of [nominal amt.] _____ (\$ _____) (the "Option Consideration") on or before the fifth (5th) business day following execution of this Agreement by Grantee. (Note: If more than nominal amount, then funds will be held by Escrow Holder, _____ pursuant to the Escrow Agreement attached hereto.)
3. Purchase Price. The total purchase price for the Agricultural Conservation Easement will be _____ (\$ _____) of which the amount paid as consideration for this Option shall be a part. The entire amount shall be paid in cash or immediately available funds at closing.
4. Closing.
 - a) Closing Date. Closing shall be held at the office of Escrow Holder on or before the first business day which is 30 days following exercise of the Option, or as soon thereafter as Grantor has fully performed hereunder.

removal or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any applicable federal, state or local laws or ordinances relating to any Hazardous Materials and affecting the Property, or any portion thereof; (iii) claims made or threatened by any third party against Grantor or the Property; or any portion thereof, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iv) Hazardous Materials occurrence or condition on any real property adjoining or in the vicinity of the Property; or (v) underground storage tanks located on the Property and now or formerly used for the storage or containment of any Hazardous Materials, including any petroleum products or by-products.

At Closing, Grantor shall deliver to Grantee a certificate stating that each of the representations, warranties and covenants made herein are true and correct as of Closing.

Grantor hereby agrees to indemnify, defend (by counsel satisfactory to Grantee) and hold harmless Grantee and Ducks Unlimited, Inc., its directors, officers, employees and agents from and against any and all losses, claims, damages, penalties, liabilities, response costs and expenses including litigation costs and attorneys' fees, arising out of the inaccuracy of any representation or warranty provided by Grantor in, or otherwise given in writing to Grantee pursuant to, this Agreement.

7. Conditions Precedent.

The following shall be conditions precedent to Grantee's obligation to acquire the Agricultural Conservation Easement at close of escrow:

- a) Grantee's obligation to complete the purchase hereunder is conditioned upon the approval of the purchase by the Board of Directors of Wetlands America Trust, Inc. and the Board of Directors of Ducks Unlimited, Inc. Each of the boards meet twice a year. In the event either board would elect not to approve the purchase of the conservation easement on the stated property, then this Agreement shall terminate with no further obligation on the part of either the Grantor or Grantee.
- b) Grantor's compliance with each of its obligations, covenants and agreements' herein, and the accuracy and completeness in all material respects of each of Grantor's representations and warranties as of the Closing Date.
- c) No administrative or judicial proceeding shall have commenced as of the Closing Date seeking to prevent or restrain the consummation of the

transaction contemplated by this Agreement or which would materially and adversely affect the Agricultural Conservation Easement or its use.

- d) The physical and environmental condition of the Property shall conform to the Baseline Documentation Report ("Report") at the time of closing, which Report is an accurate representation of the Property at the time of this Conservation Easement, and which shall be on file with both the Grantor and the Grantee.
8. Taxes. Grantor agrees that it will remain responsible for the payment of all property taxes levied against the Property, including all supplemental and deferred taxes, whether or not a lien.
9. Default; Remedies.
- a) Default by Grantor. In the event of (i) a default by Grantor under this Agreement, (ii) this transaction shall fail to close under any circumstances other than those which entitle Grantor to retain the Option Consideration, (1) Grantee may terminate this Agreement in which event all payments made by Grantee, including all but Ten Dollars (\$10.00) of the Option Consideration, shall be refunded and reimbursed to Grantee immediately by Escrow Holder; the remaining Ten Dollars (\$10.00) shall be delivered by Escrow Holder to Grantor; and Grantor shall pay any escrow cancellation fees due to Escrow Holder, or (2) Grantee may proceed to close, and, in either case, Grantee shall have all other rights and remedies available to Grantee at law or in equity, including, without limitation, the right to specifically enforce this Agreement.
 - b) Default by Grantee. In the event that (i) Grantee exercises its Option hereunder, (ii) the conditions precedent set forth in Paragraph 7 herein shall have been satisfied or waived by Grantee, (iii) Grantor shall have performed all of Grantor's covenants and obligations hereunder and shall not be in default hereunder, and (iv) Grantee shall be unable to or fail to perform its obligations hereunder, then Grantor shall be entitled to retain the Option Consideration as liquidated damages and Grantee shall pay any escrow cancellation fees due to Escrow Holder. THE PARTIES HAVE AGREED THAT GRANTOR'S ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY GRANTEE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE OPTION CONSIDERATION HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF GRANTOR'S DAMAGES AND AS GRANTOR'S EXCLUSIVE REMEDY AGAINST GRANTEE, AT LAW OR IN EQUITY, IN THE EVENT OF A

DEFAULT UNDER THIS AGREEMENT SOLELY ON THE PART OF GRANTEE OR IF GRANTEE IS UNABLE OR FAILS TO PERFORM ITS OBLIGATIONS HEREUNDER AND THE CONDITIONS TO CLOSING SPECIFIED HEREIN HAVE BEEN SATISFIED AND GRANTOR HAS PERFORMED ALL ITS COVENANTS AND OBLIGATIONS HEREUNDER AND IS NOT IN DEFAULT.

AGREED:

WETLANDS AMERICA TRUST, INC.

GRANTOR

-
10. Grantor shall maintain the Property in its condition as of the date of this Agreement. If Grantor fails to maintain the Property in its condition as of the date of this Agreement or if the condition of the property is changed by forces beyond the reasonable control of the Grantor, Grantee may, by written notice to Grantor and Escrow Holder, terminate this Agreement. In such an event, all payments made by the Grantee, including all but Ten Dollars (\$10.00) of the Option Consideration, shall be refunded and reimbursed to Grantee.
 11. Right of Entry. Grantee may enter upon the Property at reasonable times for surveying, inspection and other purposes related to this transaction.
 12. Broker's Commission. Grantor and Grantee each represents to the other that it has not contracted with any broker or finder with regard to this transaction, and agrees to indemnify and defend the other and hold the other harmless from and against all liability, claims, demands, damages and costs of any kind arising from or connected with any broker's or finder's type of fee, commission or charges claimed to be due any person arising from such party's conduct with respect to this transaction.
 13. Costs and Fees. Escrow fees shall be paid one-half by Grantor and one-half by Grantee. Documentary transfer taxes and the premium for the Policy of Title Insurance shall be paid by Grantor. Grantee shall pay the cost of recording the Agricultural Conservation Easement Deed.
 14. Affidavit. Grantor shall furnish Grantee at or prior to closing with:
 - a.) a duly executed non-foreign affidavit in the form attached to this Agreement as Exhibit C pursuant to Section 1445(b)(2) of the Federal Code, and on which Grantee is entitled to rely, that Grantor are not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Code; and
 - b.) a duly executed Form 590 in the form attached to this Agreement as Exhibit

D.

15. Memorandum of Agreement. A Memorandum of Agreement evidencing this Agreement, in the form attached as **Exhibit E**, shall be recorded in the official records of _____ County, California, as part of this Agreement.
16. Notices. Any notice to be given by either party to the other hereunder may be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to the Grantor, _____, and to Grantee at One Waterfowl Way, Memphis, Tennessee 38120, Attn: Chief Operating Officer. Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. If any notice from one party to the other is given by registered or certified mail, notice shall be deemed given on the date shown received on the return receipt.

As an alternative form of notice hereunder, either party may deliver written notice to the other hereunder by deposit thereof with Federal Express or other reputable "next day" delivery service (i) addressed as stated in the foregoing paragraph; (ii) together with delivery instructions, dated the date such deposit is made, and specifying whether overnight, two-day or next business day delivery is requested. Notice delivered in this manner shall be deemed given on the delivery date specified in the sender's copy of such delivery instructions.

17. Successors and Assigns. The terms and conditions of this Agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of Grantor.
18. Exhibits. The following exhibits are attached hereto and incorporated herein by this reference: Exhibits A, B, B-1, C, D, and E.
19. Miscellaneous. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or the same counterpart. Time is of the essence in the performance of the obligations under this Agreement. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby. This Agreement represents the entire agreement of the parties and may not be amended except by a writing signed by each party hereto. Grantor and Grantee each represents that they or their respective signatories have full right and authority to enter into and consummate this Agreement and all related documents and that, if they are other than an individual, they are duly organized, validly existing and have the necessary qualifications to do business in the State of California. The obligations, covenants, indemnifications, representations, warranties and remedies set forth in this Agreement, including without limitation those set forth in Paragraph __, shall not merge with the transfer of

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first stated above.

GRANTOR:

By: _____

Its: _____

GRANTEE

WETLANDS AMERICA TRUST, INC.

By: _____

Its: _____

LIST OF EXHIBITS

- A Deed of Agricultural Conservation Easement
- B Map of the Property
- B-1 Legal Description
- C Nonforeign Affidavit
- D CA Form 590
- E Memorandum of Agreement

DRAFT

DOCUMENT PROPERTY OF:
DUCKS UNLIMITED, INC.
ONE WATERFOWL WAY
MEMPHIS, TN 38120

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (this "Easement") is made as if this

_____ day of _____, 1999, by _____, a(n)

(individual or corporation), of _____,

(together with his heirs, personal representatives, successors, and assigns hereinafter collectively referred to as "Grantor"), and WETLANDS AMERICA TRUST, INC., a non-profit corporation organized under the laws of the District of Columbia, One Waterfowl Way, Memphis, Tennessee 38120, ("Grantee");

WHEREAS, Grantor is the owner in fee simple of certain real property ("Protected Property") known as _____ in _____, which is _____ acres, more or less, and more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Protected Property: is comprised of open space land essential to its continued use for agricultural production; is currently cultivated for field crop production; possesses significant ecological, scenic and open space values; provides significant habitat for wildlife including, but not limited to, migratory habitat for birds on the Pacific flyway and numerous other waterfowl, shorebirds, sandhill cranes; has other conservation values; and has the potential to provide additional habitat when flooded during winter months.

WHEREAS, protection and preservation of the Protected Property, including its wildlife, wildlife habitat, and conservation values will assure that this area and its existing features will continue to provide agricultural productivity and a significant public benefit by preserving open space and providing habitat values for wildlife, including but not limited to, winter flooded lands that provide habitat for migratory birds and waterfowl on the Pacific Flyway, and providing scenic qualities unique to the Sacramento Valley; and

WHEREAS, the Uniform Conservation Easement Act of 1981 as well as the California Code of Laws, as amended, permit the creation of conservation easements for the purposes of, among other things, retaining or protecting natural, scenic, historical or open space values of real property, assuring real property is available for agricultural, forest, recreational, educational or open space use, protecting natural features and resources, maintaining or enhancing air and water quality or preserving the natural, historical, architectural, archeological or cultural aspects of real property;

WHEREAS, the State of California recognizes the public importance and validity of agricultural conservation easements by its enactment of Section 815 et seq. of the Civil Code;

WHEREAS, this Easement will serve to support various governmental conservation policies including but not limited to the Farmland Protection Policy Act, P.L. 97-98, 7 USC §§ 4201 et seq., whose purpose is to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses;

WHEREAS, GRANTEE is organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended, qualified to acquire and hold agricultural conservation easements; and

WHEREAS, the specific conservation values of the Protected Property on the date of this Easement are documented in the Baseline Documentation Report ("Report"), dated _____, a copy of which is on file with both the Grantor and the Grantee. Both parties agree the Report provides an accurate representation of the Protected Property and the condition of the same as of the date of this Easement as required by Treasury Reg. 1.170 A-14 (g) (5), and is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement, and may include: A) The appropriate survey maps from the United States Geological Survey, showing the property line of the Protected Property and other contiguous or nearby protected areas; B) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas); C) An aerial photograph of the Protected Property at an appropriate scale taken as close as possible to the date of this Easement; and D) On-site photographs taken at appropriate locations on the Protected Property; and other documentation possessed (at present or in the future) by the Grantor which the Grantor shall make available to the Grantee, its successors and assigns, which documentation

establishes the conditions of the Protected Property at the date of this Easement as required by Treasury Reg. 1.170A-14 (g) (5).

WHEREAS, Grantor represents that the Protected Property is free and clear of any liens or encumbrances and that as owner of the Protected Property, Grantor has access thereto, the right to convey this Easement to the Grantee, and the right to preserve and protect the conservation values of the Protected Property in perpetuity; and

WHEREAS, to accomplish the aforementioned purposes, Grantor, as owner of the Protected Property, intends to convey to Grantee and Grantee intends to purchase this Easement restricting the uses which may be made of the Protected Property to preserve and protect the agricultural, open-space, wildlife habitat and scenic values of the Protected Property forever;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California and in particular California Civil Code 815 et seq., Grantor hereby voluntarily grants and conveys to Grantee, its successors and assigns, this Easement in gross in perpetuity on, over, and across the Protected Property, subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Protected Property, and the parties agree as follows:

Section I

PURPOSE

It is the purpose of this Easement to assure that the Protected Property will be

- A) retained in perpetuity predominantly in its natural, scenic, and open-space condition, as evidenced by the Report,
- B) available forever for those agricultural uses, and to foster agricultural practices, that will be in harmony with the protection and preservation of wildlife habitat and the processes that sustain that habitat, and in harmony with the open space and scenic qualities of the Protected Property, for conservation purposes and;
- C) protected against any use which will impair significantly or interfere with the conservation values of the Protected Property, its wildlife habitat, natural resources or associated ecosystem.

*Points A, B, and C of this Section are collectively referred to as the "Purpose" of this Easement.

Section II

AFFIRMATIVE RIGHTS

- 2.1 Right of Entry and Access. The Grantee shall have the right to enter the Protected Property for the purposes of inspecting same to determine compliance herewith. The right of entry and access herein described does not extend to the public or any person or entity other than the Grantee, its agents, employees, successors, and/or assigns.

- 2.2 Enforcement. The Grantee shall have the right to monitor the Protected Property for compliance with the terms and conditions of this Easement and to enforce the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, in accordance with Section 5.15.
- 2.3 Development Rights. Except as specifically reserved in Section IV, Grantor transfers to Grantee and Grantee shall retain all development rights that are now or hereafter allocated to, implied, reserved or inherent in and to the Protected Property. The parties agree that such rights may not be used on or transferred to any portion of the Protected Property as it now or hereafter may be bounded or described, or to any other property, adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Protected Property or any other property.

Section III

RESERVED RIGHTS

Notwithstanding any provision to the contrary contained in this Easement, the Grantor reserves for himself, his heirs, successors and assigns the "Reserved Rights" set forth in this Section III. The exercise of all Reserved Rights will be in full accordance with all applicable local, state and federal laws and regulations, as well as in accordance with the Purpose of this Easement.

- 3.1 Agriculture. The right to engage in commercial and non-commercial agricultural and farming activities provided the same is conducted in a manner consistent with the

Purpose of this Easement and undertaken in the same locations where agricultural and farming activities take place as of the date of this Easement. The right to locate, construct, and maintain irrigation and draining facilities. Agricultural activity shall be consistent with the maintenance and enhancement of soil composition, structure and productivity, and may not result in pollution or degradation of any waters or have a detrimental effect upon fish or wildlife, their natural habitat, or upon the natural ecosystem and its process.

A) Historical Agricultural Practices. The right to continue historical agricultural practices consistent with the Purpose of this Easement. Cultivation of rice is hereby specifically permitted.

B) New Agricultural Practices. The right to conduct agricultural practices and activities that differ from historic practices so long as such practices and activities do not impair the significant conservation values, do not result in significant soil degradation, do not result in significant pollution or degradation of any surface or subsurface waters, and are consistent with and do not adversely affect the Purpose of this Easement. The right to change the type of crop grown in accordance with Section 5.1 of this Easement.

However, notwithstanding anything in this Section 3.1, there shall be no planting or cultivation of commercial orchards and/or vineyards or any other crop that would conflict with, prevent, restrict or eliminate the Purpose of this Easement.

3.2 Agricultural Chemicals. The right to use agrichemicals, including, but not limited to, fertilizers, biocides, herbicides and rodenticides, but only in those amounts and with that

frequency of application constituting the minimum necessary to accomplish reasonable agricultural and residential activities permitted by the terms of this Easement.

Notwithstanding the foregoing sentence, no use of agrichemicals will be made if such use would result in (A) contamination of any water, (B) any significant impairment of any natural ecosystem or process on the Protected Property.

3.3 Subdivision. The right to convey different parcels of land to different owners as per Section 5.6, so long as the Protected Property is maintained as a whole and used for agricultural purposes primarily and any other use as permitted under this Easement. The minimum size of any parcels shall be regulated according to zoning regulations.

3.4 Structures. The right to maintain and replace the existing and additional permitted structures at the same location with structures of like size and function. In addition to the existing structures, the right to construct in the Building Envelope defined below up to a maximum total of _____ single-family housing units (hereinafter "Housing Units") in addition to associated garages, and ancillary non-residential structures as are customary to like residences in the area of the Protected Property such as sheds and related agricultural structures, (hereinafter garages and non-residential structures are collectively "Related Structures") (collectively Housing Units and Related Structures are referred to as "New Structures"). Each Housing Unit shall not exceed _____ feet in height and _____ thousand (____,000) square feet in heated space and shall be located on a minimum of _____ acre lot with a setback or distance of at least _____ feet from any other single family housing unit. Each such Related Structure shall not exceed forty

(40) feet in height and _____ square feet in area and shall be located within the same _____ acre lot as the related Housing Unit.

All existing and New Structures shall be located within the Building Envelope shown in Exhibit ____ which is not to exceed _____ acres.

3.5 Roads. The right to maintain and replace existing roads at the same location with roads of like size and composition. The right to construct new roads to the New Structures using permeable materials (e.g. sand, gravel, crushed stone). Grantor shall use existing roads whenever possible for access to the New Structures. The right to widen existing roads for utility rights-of-way. The right to use roads for all activities permitted under this Easement. Maintenance of roads shall be limited to normal practices for non-paved roads, such as the removal of dead vegetation, necessary pruning or removal of hazardous trees and plants, application of permeable materials necessary to correct erosion, placement of culverts, water control structures, and bridges, and maintenance of roadside ditches. The right to replace bridges and construct new bridges as necessary.

3.6 Hunting and Fishing. The right of Grantor, Grantor's family members and Grantor's guests to hunt and fish on the Protected Property. The right to lease hunting and fishing rights on the Protected Property in accordance with Section 3.8. The right to construct and maintain hunting blinds on the Protected Property.

- 3.7 Predators. To control nuisance animals causing damage to the Protected Property by the appropriate use of legal control techniques. Wherever possible, all measures used for such control will be limited in their application to specific animals which have caused damage. If it is not possible to identify a specific problem animal or when historic data indicates that a sufficient threat exists, Grantor may use appropriate preventive control techniques.
- 3.8 Leases. The right to lease, or grant other less-than-fee interests in all or a portion of the Protected Property for any use permitted to the Grantor under this Easement, provided that such lease or other interest is consistent with and subject to the terms of this Easement, and is not of a nature or terms as to constitute an impermissible subdivision of the Protected Property.
- 3.9 Recreational Activities. The right to conduct recreational activities, including, but not limited to, bird watching, hiking, horseback riding, and picnicking, provided that these activities require no surface alteration or other development of land, and they do not infringe upon the conservation values of the Protected Property.
- 3.10 Wells and Septic Systems. The right to maintain existing septic systems for the existing structures on the Protected Property and place and maintain septic systems for Housing Units and Related Structures on the Protected Property. Any new septic drain system must be located a minimum distance of one hundred (100) feet from any wetland, or

perennial stream, or in accordance with existing governmental regulations, whichever is the greater distance.

3.11 Water Resources. The right to develop and maintain those water resources on the Protected Property necessary for wildlife, private recreation, farming, and other agricultural uses permitted by this Easement, so long as such development and maintenance does not impair any of the water resources. Permitted activities shall include, but are not limited to, the right to develop, restore and enhance water resources for agricultural and wildlife improvement; and the right to undertake water conveyance and drainage measures.

The right to repair, replace, maintain and move existing and/or historic water control and conveyance structures and the right to construct new water control structures as necessary.

Manipulation or alteration of natural water courses is permitted consistent with the Purpose of this Easement and if such manipulation or alteration advances other activities permitted under this Easement.

3.12 Vegetation and Trees. The right to cut and remove grass or other vegetation, to perform routine upkeep, maintenance, landscaping, including the planting of trees, shrubs, flowers, and other native and non-native plant species, consistent with the Purpose of this Easement, immediately around any permitted structures on the Protected Property within the Building Envelope. The right to selectively cut, burn, and mow vegetation in existing fields for waterfowl habitat enhancement and protection. The right to undertake the

removal of grass and other vegetation for road maintenance and tick and mosquito control in such a way as to preserve the present condition of the Protected Property on the date of this Easement.

3.13 Minerals. All minerals, gas, oil and other hydrocarbon rights are reserved by Grantor and not conveyed by this Easement; provided that Grantor reserves to himself, his heirs and assigns and to all predecessors in title, their heirs, grantees, personal representatives and assigns who have reserved or conveyed title to such mineral, gas, oil and other hydrocarbon rights, all interest in minerals, gas, oil and other hydrocarbon products found or to be found in, on or under the Protected Property provided that Grantor shall cause any persons exploring for, developing or extracting minerals, gas, oil or related hydrocarbon products on or under the Protected Property to insure the following:

- A) No water shall be utilized on the Protected Property which would cause interference with surface water rights of Grantor, the wells and streams which exist on the Protected Property, or other sources of water on the Protected Property.
- B) Whenever possible, access to exploration and/or extraction sites of minerals, gas, oil, or related hydrocarbons products shall be by existing roads.
- C) Any new road shall conform to the standards of this Easement.
- D) Any surface disturbance resulting from permitted subsurface exploration or extraction activities shall be restored upon completion to a condition similar or

equivalent to its state prior to the disturbance, by restoring soils and replanting suitable domestic vegetation.

- E) Any waste water resulting from such activities which is of materially poorer quality than the existing water supplies shall be treated so that its quality is substantially equivalent to existing water supplies.
- F) There shall be no exploration or extraction of minerals, gas, oil or related hydrocarbons by any surface mining method, within the meaning of Section 170 (h) (5) (B) of the Code and the regulations promulgated thereunder, nor shall there be any exploration or extraction by any surface mining method if such activity would, in the sole judgment of the Grantee, result in the destruction of a significant natural, scenic wildlife habitat, or other conservation attribute of the Protected Property.
- G) The Grantor shall provide Grantee with advance written notice at least sixty (60) days prior to engaging in any exploration for or extraction of (or leasing, selling, or otherwise disposing of the rights thereto) minerals, gas, oil and other hydrocarbon products from beneath the Protected Property whether or not such exploration or extraction (or leasing, selling, or otherwise disposing of the rights thereto) could result in any surface disturbance.
- H) There may not be at any time any extraction or removal of minerals, gas, oil and other hydrocarbon products by any surface strip mining method.

3.14 Utilities. The right to bury or otherwise camouflage all utility systems or extensions of the existing utility systems. The right to maintain gas, electric, and heating oil systems for any existing or New Structures on the Protected Property.

3.15 Signs. The right to construct, place and maintain directional signs, signs indicating and identifying occupancy, regulatory signs, project signs, and signs advertising the sale of the Protected Property. Signs may not exceed four (4) feet by eight (8) feet in size.

3.16 Consistent Uses. The Grantor has the right to engage in any and all acts or uses not expressly prohibited herein that are consistent with the Purpose of this Easement.

Section IV

RESTRICTIONS AND COVENANTS

In furtherance of the foregoing rights, the Grantor states and agrees that the following uses and practices, though not an exhaustive recital of the inconsistent uses and practices, are hereby deemed to be inconsistent with the Purpose of this Easement, and shall be prohibited, subject to the rights reserved in Section III:

4.1 Subdivision. The Protected Property may not be subdivided. Although the legal description of the Protected Property may describe more than one tract of land which could be sold separately, the Grantor covenants and agrees that all of the Protected

Property shall be held by the same owner(s) as a single undivided tract of land or held by different ownership in accordance with the terms and conditions of this Easement.

- 4.2 Structures. There shall be no construction or placing of buildings, camping accommodations, boat ramps, bridges, mobile homes, house-trailers, permanent tent facilities, quonset huts or similar structures, underground tanks, or other structures including, but not limited to, transmission or receiving towers, energy facilities, or water tanks on the Protected Property. There shall be no temporary shelter or vehicles of any sort providing living quarters on the Protected Property.
- 4.3 Uses. There shall be no residential, commercial or industrial activity undertaken or allowed on the Protected Property; nor shall any rights of passage across or upon the Protected Property be allowed or granted to third parties.
- 4.4 Roads. There shall be no building of any new roads, nor widening of existing roads.
- 4.5 Leases. There shall be no leasing of all or any part of the Protected Property.
- 4.6 Topography and Minerals. There will be no filling, excavating, dredging, mining, drilling or use of any surface mining method; no removal of topsoil, sand, gravel, rock, peat, minerals, gas, oil, or other hydrocarbon products or other materials; and no change in the topography of the land in any manner.

- 4.7 Incompatible Crops. There shall be no planting or cultivation of commercial orchards and/or vineyards or any other crop that would conflict with, prevent, restrict or eliminate the Purpose of the Easement.
- 4.8 Natural Water Courses. There shall be no manipulation or alteration of natural water courses, wetlands, streambanks, shorelines, or bodies of water, or activities or uses detrimental to water quality, including but not limited to degradation, pollution of any surface or subsurface waters, or rip-rapping.
- 4.9 Hunting and Fishing. There shall be no hunting or fishing on the Protected Property.
- 4.10 Refuse and USTs. No portion of the Protected Property shall be used for sanitary landfill, for the installation of any underground storage tanks ("USTs"), for the installation and use of an incinerator for the destruction of waste material or for the dumping, storing, disposal or treatment of refuse, trash, garbage, rubbish, junk, ashes, or hazardous substances or materials or waste, or the storage or disassembly of automobiles, trucks, and farm equipment.
- 4.11 Pollutants. There shall be no release, generation, treatment, use, disposal, abandonment, and movement in, on, from or across the Protected Property of a substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment.

- 4.12 Signs. There shall be no construction or placing of signs, including but not limited to, billboards, or any advertising materials of any sort, on the Protected Property.
- 4.13 Native Trees. There shall be no removal, cutting or destruction of native trees currently existing on the Protected Property, except for disease or insect control to prevent property damage or personal injury. There shall be no destruction of vegetative cover near water conveyance structures, and riparian areas.
- 4.14 Water Rights. There shall be no use of water except on the Protected Property, or the severing, conveying, or encumbering of water or water rights appurtenant to the Protected Property, separately from the underlying title to the Protected Property. There shall be no forfeiture or sale of Bureau of Reclamation rights.
- 4.15 Use Inconsistent with Purpose. The parties recognize that this Easement cannot address every circumstance that may arise in the future. The parties agree upon the Purpose of this Easement. The Protected Property will be A) retained in perpetuity predominantly in its natural, scenic and open-space condition as evidenced by the Report, B) available forever for agricultural use and, C) available to foster agricultural practices on the Protected Property in harmony with the protection and preservation of the wildlife habitat and the processes that sustain that habitat, and in harmony with the open space and scenic qualities of the Protected Property, for conservation purposes and, D) protect against any use which will impair significantly or interfere with the conservation values of the

Protected Property, its wildlife habitat, natural resources or associated ecosystem. Any use or activity not reserved in Section III which is inconsistent with the Purpose of this Easement or which materially threatens the Purpose of this Easement is prohibited. In the event that there is a dispute between the Grantor and the Grantee as to whether or not an activity or use is prohibited under this 4.15, the parties will arbitrate the matter in accordance with the provisions of Section 5.17 of this Easement.

SECTION V

GENERAL COVENANTS

- 5.1 Baseline Documentation Report. The parties agree that the Report is an accurate inventory of the Protected Property and its condition at the time of the conveyance of this Easement. This Report delineates the conservation values and agricultural significance of the Protected Property and therefore shall be used by the Grantee to ensure compliance with the terms of this Easement. The parties intend that the Report shall be used by Grantee to monitor Grantor's future uses of the Protected Property and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Protected Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. Grantor and Grantee recognize that changes in agricultural technologies, including accepted farm and forest management practices may result in an evolution of agricultural activities on the Protected Property. Such evolution shall be permitted so long as it is consistent with the Purpose of this Easement, and does not in

any way materially impair or interfere with the conservation values of the Protected Property.

5.2 Cost of Ownership. Grantor, his heirs, successors, and assigns, shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. This includes the payment of any and all real estate taxes or assessments levied on the Protected Property by authorized local, county, state or federal officials. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement. Nothing in this Easement shall be construed as giving rise, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the corresponding state statute.

5.3 Hazardous Materials Liability. Notwithstanding any other provision herein to the contrary, the parties do not intend this Easement to be construed such that it creates in or gives to Grantee:

- (A) the obligations or liabilities of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the CERCLA;
- (B) the obligations or liabilities of a person described in 42 USC §9607(a)(3);
- (C) the obligations of a responsible person under any applicable Environmental Laws, as defined below;
- (D) the right to investigate and remediate any hazardous materials, as defined below, associated with the Protected Property; or
- (E) any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any hazardous materials associated with the Protected Property.
- (F) the term "Environmental Laws" includes, without limitation, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution, protection of human health, the environment or Hazardous Materials.
- (G) the term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC 9601 et seq.), the Hazardous Materials Transportation Act (49 USC § 6901 et seq.), the Hazardous Waste Control Law (Cal. Health & Safety Code §25100 et seq.), the Hazardous Substance Account Act (Cal. Health & Safety Code §25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal,

state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

- 5.4 Indemnification. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee as well as Ducks Unlimited, Inc., and their respective members, directors, officers, employees, agents, contractors, heirs, personal representatives, successors, and assigns (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation, reasonable attorney's fees, arising from or in any way connected with: (A) injury to or the death of any person, or physical damage to any real or personal property resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (B) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitations, CERCLA and the corresponding state statute by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Protected Property; and (C) the presence or release in, on, from, or about the Protected Property, at any time, or any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

5.5 Public Access. No right of access to the general public to any portion of the Protected Property is conveyed by this Easement.

5.6 Subsequent Conveyances. The Grantor shall include reference to all terms and conditions of this Easement in any subsequent deed, or legal instrument by which the Grantor divests itself of either the fee simple in all or part of the Protected Property, or its possessory interest in any portion of the Protected Property, and that the Grantor will notify the Grantee in writing of the conveyances and respective parties thereto.

5.7 Notices/Approvals. Any notices or approval requests required in this Easement will be sent by registered or certified mail, postage prepaid, to the following addresses below or to such address as may be hereafter specified by notice in writing.

GRANTEE

Wetlands America Trust, Inc.
One Waterfowl Way
Memphis, TN 38120-2351
Attn.: Chief Operating Officer

With copy to:

Ducks Unlimited, Inc.
Western Regional Office
3074 Gold Canal Drive
Rancho Cordova, CA 95670-6116
Attn: _____

GRANTOR:

5.8 Severability. In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms will remain valid and binding.

5.9 Perpetuity. The burdens of this Easement will run with the Protected Property and will be enforceable against the Grantor and all future owners in perpetuity during the period of such ownership.

5.10 Assignment by Grantee. The benefits of this Easement shall be in gross and shall be assignable by the Grantee, only upon the following conditions: (A) the Grantee must require that the Purpose of this Easement continues to be carried out, and (B) the assignee, at the time of the assignment, must qualify under Section 170 (h) of the IRS Code, and applicable regulations thereunder, and under California law and must be eligible to receive this Easement directly. In the event Grantee ceases to exist or exists but no longer as a tax exempt, non-profit organization, qualified under Section 501 (c) (3) of the IRS Code, this Easement shall automatically become vested in a tax exempt, non-profit organization qualified under Section 501 (c) (3) and 170 (h) (3) of the IRS Code and which has experience in holding similar conservation easements as designated by the then owner of the Protected Property.

In any assignment of this Easement by the Grantee, the Grantee agrees to give preference to Ducks Unlimited, Inc., a not-for-profit corporation organized under the laws of the District of Columbia, One Waterfowl Way, Memphis, Tennessee 38120, if Ducks Unlimited, Inc., at the time of the assignment, is still a "qualified organization" as described in the above paragraph.

5.11 Judicial Extinguishment. If a subsequent, unexpected change in the conditions of the Protected Property or the surrounding property, make impossible or impractical the continued use of the Protected Property for the Purpose of this Easement, the Easement shall be extinguished by judicial proceeding and in accordance with Section 5.14.

5.12 Amendments. This Easement shall not be amended, modified, or terminated except in writing in a document signed by Grantor and Grantee. No amendment shall be allowed that would adversely affect the Purpose of this Easement or the status of the Grantee under any applicable laws, including Section 170 (h) of the IRS Code or the laws of the State of California. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall not permit additional development other than development permitted by this Easement on its effective date, and shall not permit any impairment of the significant conservation values of the Protected Property. Any such amendment shall be recorded in the land records of the _____ of _____. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment.

5.13 Eminent Domain/Condemnation. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Easement, Grantor shall take appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds (including, for purposes of this section, proceeds from any lawful sale of the Protected Property unencumbered by the restrictions hereunder) will be distributed between the Grantor and the Grantee in shares in proportion to the fair market value of their interests in the Protected Property on the date of the execution of this Easement. The Grantee shall use its share of the net proceeds for conservation purposes.

5.14 Compensation. This Section is applicable only to the determination of compensation payable to Grantee in the event of a termination or extinguishment of this Easement pursuant to Section 5.11 and Section 5.13. The value of the Protected Property at the date of this Easement, shall be the value established by the qualified appraisal taken for that purpose (pursuant to Treasury regulation Section 1.170A-14 or its successor regulation) for federal income tax purposes ("Appraisal").

The parties agree upon that the compensation payable to Grantee in the event of termination or extinguishment of this Easement pursuant to Section 5.11 and Section 5.13, shall be the amount determined by dividing the fair market value of the Easement shown in the Appraisal by the fair market value of the Protected Property, prior to this Easement, shown in the Appraisal. That figure is then multiplied by the fair market value

of the Protected Property at the time of termination or extinguishment, minus improvements made after the date of the Appraisal.

5.15 Notice of Breach. In the event there is a breach of the terms of this Easement by the Grantor or by a third party acting at the direction of, with the permission of, or under control of the Grantor, the Grantee shall have the right to notify the Grantor in writing of such a breach, and the right to enforce by proceedings at law or in equity the covenants hereinafter set forth, including, but not limited to the right to require the restoration of the Protected Property to its condition on the date of this Easement as evidenced by the Report. Upon such notice, the Grantor shall have thirty (30) days to undertake actions, including restoration of the Protected Property, that are reasonably calculated to correct swiftly the conditions constituting such breach. If the Grantor fails to take such corrective action, the Grantee may, at its discretion, undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections by Grantor. The cost of such corrections, including Grantee's expenses, court costs and legal fees will be paid by the Grantor, provided it is determined that the Grantor or a third party acting at the direction of, with the permission of or under the control of the Grantor, is responsible for the breach. Nothing herein shall be construed to entitle the Grantee to institute any proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control such as changes occurring due to natural causes or unauthorized wrongful acts of third parties.

5.16 Waiver of Rights. Grantee, its successors or assigns, do not waive or forfeit the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act. The rights hereby granted will be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Easement.

5.17 Arbitration. In the event of a disagreement between the Grantor and the Grantee as to whether or not a use or activity violates Section 3.15 (hereinafter "Arbitration Issue"), the Arbitration Issue will be resolved by a committee made up of three (3) individuals who have reasonable experience with conservation easements and land use of similar properties. One individual will be selected by Grantor, one individual will be selected by the Grantee and the other individual will be selected by the two individuals selected by Grantor and Grantee. The three (3) individuals (hereinafter "Committee") will determine by majority vote the Arbitration Issue. The Committee shall follow the procedural rules established by the American Arbitration Association. The decision of the Committee will be binding on the Grantor and the Grantee.

5.18 Warranty of Title. Grantor hereby warrants and represents that the Grantor is seized of the Protected Property in fee simple and has the right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances, except easements of record and prescriptive easements, purchase money mortgages, and mineral right reservations, if any, and that the Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

5.19 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of California.

5.20 Filing. The Grantor shall file this instrument and any amendment in the official land records as soon as is practicable after all signatures have been obtained and the Grantee may re-file it and any amendments to the Easement at any time as may be required to preserve its rights in this Easement.

5.21 Counterparts. This Conservation Easement may be executed in multiple counterparts.

5.22 Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 5.12.

Habendum Clause. **TO HAVE AND TO HOLD** this Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or equity, either in possession or expectancy, for the proper use and benefit of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has set his hand and seal on this _____ day
of _____, 1999 and the Grantee has caused this Easement to be signed in its name by its
Chief Operating Officer, and its corporate seal to be affixed hereto.

SIGNED, SEALED AND

DELIVERED IN THE PRESENCE OF : GRANTOR:

STATE OF _____)

COUNTY OF _____)

I, a Notary Public, do hereby certify that _____
personally appeared before me this day and acknowledged the due execution of the foregoing
instrument.

WITNESS my hand and seal this _____ day of _____, 1999.

_____ (.L.S.)

Notary Public for _____

My Commission expires: _____

**Continuation of Signature Page For
Deed of Conservation Easement**

GRANTEE:
WETLANDS AMERICA TRUST, INC.

By: _____
Its: Chief Operating Officer

STATE OF TENNESSEE)

COUNTY OF SHELBY)

I, a Notary Public, do hereby certify that _____, on
behalf of Wetlands America Trust, Inc. as its Chief Operating Officer, personally appeared before
me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this _____ day of _____, 1999 .

Notary Public for Tennessee (L.S.)

My Commission expires: _____

Monitoring Plan:

Ducks Unlimited, Inc. (DU) takes pride in its commitment to programs that are grounded in the best available science. Continued monitoring and evaluation will be undertaken to ensure program objectives are achieved. Described below is the standard monitoring and enforcement protocol established for conservation easements held by Ducks Unlimited, Inc. This protocol will be applied to each agricultural conservation easement acquired through the CEAL Program.

Monitoring and Enforcement

Once the easement has been signed, DU has a legal obligation to monitor the property protected by the easement to ensure that the terms of the easement are being met. Ideally, ongoing interaction and good communication with the landowner or his/her property manager will ensure that regular monitoring turns up few surprises. If regular contact is maintained, DU should be consulted prior to any action being taken by the property manager that may jeopardize resources protected by the easement. The following guidelines should be followed in designing the monitoring program.

Most easement set our guidelines for securing permission to access the property to monitor terms of the easement. These should be followed closely to prevent any unnecessary confusion. Contact the property manager or owner regularly and let him/her know the purpose of the visit and the legal requirement of monitoring.

The initial inspection, following execution of the easement, should be timed to coincide with the ideal time of year to monitor resources being protected. Thereafter, inspections should be timed annually within 30 days of that date for consistency. Start off the cooperative relations by seeking input from the owner in setting up that initial date so that it does not unduly inconvenience him/her.

Use a standard form (see attached) that has been pre-prepared for the visit. It should briefly summarize everything needing monitoring, have the basic information about the property, and have a checklist to go through during the visit. It is strongly suggested that a copy of the easement, the Baseline Documentation Report, and the most recent inspection report area available for the inspection.

Completed and signed copies of the inspection report will be distributed to the Regional Office, the landowner, and Legal and Conservation Programs at National Headquarters. Signatures should include those of the person conducting the inspection and the landowner or his/her representative.

Monitoring inspections should be conducted with the owner or his/her property manager present whenever possible. Ideally, all inspections will be conducted by the staff of DU. In certain instances, it may make sense to share monitoring responsibilities with our conservation partners or consultant(s). Be certain that the representative sent by the partner is qualified, that the landowner knows who is expected, and that a DU staff member review the report prior to asking for landowner concurrence.

Compliance with terms laid out in the conservation easement should follow if good communications are maintained between DU and the owner/property manager. However, if a suspected violation occurs, then procedures should be followed as outlined in the easement. Usually some form of arbitration is prescribed where disagreements result and terms for payment of legal costs is outlined. Most easements also outline procedures for amending easements and these should be followed when an amendment seems appropriate. Amending easement terms, while protecting key resource elements, through good communication between grantor and grantee is far preferable to taking disputes into arbitration. Ultimately, if amendment and arbitration fail, decisions are referred to the court system.

Date of Inspection: _____

DU Region _____
State _____

**DU Conservation Lands Program
Conservation Easement Donations/Acquisitions**

Monitoring Inspection Form

1. Introduction

The conservation easement will be monitored annually. An upgraded report on the condition of the property will be prepared and submitted to the grantor of the easement.

PRIOR to embarking upon the site visit to monitor the property protected by the conservation easement, the following five preliminary steps **MUST** be completed.

1. Review Conservation Easement document.
2. Review amendments, if any.
3. Review BDR.
4. Review survey map/aerial photo.
5. Send notice to landowner. (NB: This method must conform to the provisions within the Easement regarding notice.)

II. Preliminary Information

1. Property: _____
2. Location: _____
3. Acres: _____
4. Conservation Easement Date: _____
Amendment Date: _____
5. Name of Landowner: _____
6. Address: _____

7. Telephone Nos.: Home _____
Office _____
Mobile _____
Fax _____
8. Original grantor of Conservation Easement? Yes _____ No _____
9. If not, year of sale _____ (a copy of the Deed is attached)
10. Property Manager: _____
11. Address: _____

12. Telephone Nos.: Home _____
Office _____
Mobile _____
Fax _____

III. Site Visit

1. Grantee Representative (name and title) conducting site visit _____

2. Grantor Representative (name and title) present _____

3. Mark an "X" next to the current use/uses of the property.
- | | |
|---------------------------------|-------|
| Agricultural | _____ |
| Ecosystem/species preservation | _____ |
| Scientific/educational purposes | _____ |
| Wildlife/habitat management | _____ |
| Recreational | _____ |
| Forestry | _____ |
| Commercial | _____ |
4. Current land use of adjacent properties. _____

5. **Baseline photo sites located and physical state at present compared to those photos. (New baseline photos should be taken at the same points every 5 years.)** _____

6. **If property has been altered by natural causes, describe location, changes, etc.**

7. **If property has been altered due to man-made changes, describe location, etc.**

8. **Are these changes consistent with the terms of the Conservation Easement?**
Yes _____ No _____
9. **Is there a need for cleanup, maintenance or restoration?**
Yes _____ No _____
10. **If yes, how does landowner plan to return property to its original condition?**

11. **Is construction, restoration, major maintenance or changes in use or ownership contemplated within the next 12 months? Yes _____ No _____**
12. **If so, describe and state whether or not these changes are in compliance with the terms and conditions of the Conservation Easement.**

13. **Evaluation as to property's condition.** _____

14. **Potential threats or problems to property's condition.** _____

15. **Is there signage on the property?** _____

16. **If so, does it conform with the terms of the Conservation Easement?**
Yes _____ No _____

IV. General

1. **Overall, are the terms and conditions of the Conservation Easement being adhered to? Yes _____ No _____**
2. **List and describe any violations or potential violations of the Easement.** _____

3. **Landowner's comments:** _____

4. **Grantee's comments:** _____

I, _____, owner or representative of the property known as _____, agree that the description and account of the current state of the property, as recorded herein, is an accurate description of the property as of today.

Landowner/Representative

Name: (Print) _____

Date: _____

Inspector

Name: (Print) _____

Date: _____

List any attachments

_____ **none**

_____ **photos**

_____ **map(s)**

_____ **survey(s)**

_____ **deed**

_____ **other**